Misdemeanor

THE

LEGISLATIVE COUNCIL

NOT CHARGEABLE WITH THE LOSS OF

THE APPROPRIATION BILL;

WITH OBSERVATIONS

ON THE DANGEROUS AND UNCONSTITUTIONAL PROCEEDINGS OF THE HOUSE OF ASSEMBLY.

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1835.

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SIR THOMAS MOORE, the celebrated Lord Chancellor, in the reign of Henry VIII. was in the habit of occasionally relating an amusing story, of his having on the petition of the Inhabitants, been sent down by the King, to Tenterden, with other Commissioners, to ascertain whether any means could be found for removing, from the mouth of the harbour of that place, the obstructions occasioned by the shifting of the Goodwin Sands. The Commissioners wished first to ascertain *when* and *how* the quick sands had begun to accumulate in that spot; and for this purpose assembled all the old men in the neighbourhood. All of them could tell *when* the sands made their first appearance; but as to *how* they came there, no one could speak. At last an elderly man came forward, with every mark of deep sagacity, and gravely stated to the Commissioners, that he could tell all about it, "Aye, marry! can I, my Lords and Masters! I know all about it. I remember the very year the sands came first; and that very same year, Tenterden Steeple was built; so Tenterden Steeple brought the Goodwin Sands to us."

This pleasant story was forcibly brought to my recollection, a few evenings ago, by the perusal of a pamphlet lately published, under the title of "The Loss of the Appropriation Bill, chargeable on the Legislative Council; with a vindication of the proceedings of the House of Assembly, by a Freeholder." It is impossible for any one to read that *clever* production, without coming to the conclusion, that the author of it is a member of the Legislature; for he ap-

pears to be acquainted, not only with what was said in the House of Assembly, but with what was thought;—with what was privately discussed among the Members, as well as what was suggested by respectable and intelligent persons out of the House.—He seems too, equally well acquainted with the proceedings in the Legislative Council; for he not only tells us what was done there, and the reasons why it was done; but he lets us into the secret of what would be done, were the matter at issue to be again brought under discussion. A Gentleman, therefore, more highly or better qualified for the task he has undertaken, could not be found in the province; and he is therefore so formidable an opponent, that it seems almost madness for me, quite a plain man, with a very moderate capacity, and but a small portion of reading to bring to bear upon the subject, to engage in a conflict with him. It does seem presumptuous in me, with nothing but a sling and a few smooth stones from the brook, to go out to fight with such a giant, so completely, so thoroughly armed for the contest. Still, so confident am I that his cause is a bad one, I *do* go forth to meet him—in the hope that at least a random cast may bring him to the ground.

This Pamphlet, *ably* as it is written, does not certainly correspond with the title which it bears. The Author professes that it is an Address on the loss of the Appropriation Bill: but if he had called it a dissertation (de omnibus rebus, et quibus dam aliis) on every thing, and a hundred things besides, with a few remarks at the end of it, on the loss of that Bill, the work would more nearly have corresponded with its title. Strange to say, though the work contains only twenty-eight pages, the Bill is not mentioned till we reach the middle of the twenty third page. Indeed four pages contain every thing he has to say upon a subject, which he justly considers as seriously injurious to the interests of the Provincial public. If these "divers and sundry" matters had

any immediate connexion with the loss of the Bill, it would be different; but, in truth, many of them have nothing more to do with it, than had Tenterden steeple with Goodwin Sands.

He discusses the propriety of paying the members of Assembly: and quotes a resolution of the House in 1788. But he does not inform us that, in the preceding year, twenty four out of twenty six Members attended the Session at St. John without any pay; that this year the Assembly met at Fredericton, for the first time, and at a very inconvenient season of the year, viz., in July; and that the sum granted to the Members, was only £140, "in such proportion as the "Speaker shall direct and certify towards defraying the ex-"pences of their attending the Assembly in the present session." The Appropriation Bill of this year is not, therefore, as he says, a *novelty*, as regards the *small* amount provided for this service; for in 1788 the amount was much smaller.

He mentions the loss of the Members' pay Bill sent to the Council in Feb. 7th, and quotes their Resolution of the 16th, and observes that the rejection of that Bill was the first step towards collision, the first attitude of hostility. But surely he must have forgotten that one step had been taken before this. The Bill, as originally introduced by Mr. End, was to provide for the expenses of the Legislature; but in committee of the whole, on Feb. 5th, the House struck out of it every thing which related to the Council, and then altered its title. Now here clearly was "the *first* step towards the collision of the two Houses: the first attitude of hostility which introduced another and another."

He quotes the Lieutenant Governor's Message in 1833, conveying Lord Goderich's opinion, and his own recommendation thereupon, that the Council should have their expences paid, in the same manner as the Members of the Assem-

bly : but he does not quote his second Message in 1834, in which he recommends the reconsideration of the principle of continuing a remuneration to one branch of the Legislature, to the exclusion of the other : nor the resolution of the House thereupon, nor the proposed amendment, (viz. to pay such members of Council as have no salary from the Crown), nor the amendment thereto.

He then discusses the impropriety of paying the Council ; talks of their holding their places " during pleasure" ; styles them not an *independent*, but a dependent branch of the Legislature, dependent on the pleasure of Government, and uses some such hard words, as a time-serving, place-seeking, dependent body. But he does not tell us, that whatever sense persons unused to formal language of this kind may attach to the expression " during pleasure"—that although members of Council ever have been, and still are, in the habit of speaking and acting for themselves, and sometimes in direct opposition to Government—there never has been one removed because of his opposition ; and that with a very few exceptions, none of which affect the truth of what I say, they have all held their seats in Council *for life*.

He tells us of the inevitable bias of the Council towards the Crown ; but he does not say a word about the many remarkable instances to the contrary which might be produced : he forgets that during this last Session, the Council came forward to protect the people, in a case in which the House had so far lost sight of the subject, as to pass a " Bill to prevent expense in proceedings against Trespasses on Crown Lands" ; whereby the powers of the Commissioner (*already in the opinion of the House too great*) would have been fearfully increased.

He informs us gravely that the constituency of this Province will never consent to any appropriation for the Legis-

lative Council, "*as at present constituted*". Comparing the last few words of this extract with what has come from other quarters, more must, I think, be meant than meet the ear but I shall reserve what I have to say with respect to them for another part of my pamphlet; and for the present merely observe, that this assertion puts me in mind of Sheridan's story of the *Three Tailors*, who met one evening at a Tavern in Tooley Street, to get up a petition for Reform in Parliament, and headed their Petition with—"We, the people of England!! So this author undertakes to speak for the whole collective constituency of this province, not only now, but in all time to come—But perhaps, when the present excitement shall have passed away, a different view of the subject may be taken, and a different opinion be entertained, even by himself, as well as by the public in general.

He informs us that there are in Council four Executive Officers, and quotes the salary of the Chief Justice and Commissioner of Crown Lands; but omits to mention that of the other two, the Auditor General, and Commissioner of Quit Rents. The salary of one is £300; that of the other only £100. This omission is disengenuous, and with a few more instances of the same kind, serves to sully an otherwise respectable performance. He discusses the expediency of dividing the Councils, and the selection of Members for the Executive Council, and quotes Mr. Spring Rice's dispatch: but he does not mention, as he might have done, the changes that have taken place in the Colonial Office, and the obstacles that must thus have been presented to the immediate execution of the designs of Government in making the division.

He descants on the fact, that the Council put nothing on their Journals in 1838, respecting the recommendation for their being paid: this was wise in them: and I must say it would be much to the credit of the Council, if they could

expunge from their Journals several things which, in that and the succeeding Session, in a fit of ill-humour and disappointed ambition, were put upon them ; I allude in particular to a most preposterous address to the King, in which they gravely argue—that because, on the abdication of James II., the Lord President of the Council did not assume the Government of England,—therefore, not the Senior Member of the Executive, but the Senior Member of the Legislative Council, ought to assume the Government of this Province.

He then relates what took place in the Lower House, on the proposition for sending up a resolution of Appropriation for the pay of the Speaker and Members ; and takes occasion to say that " it was maintained, that the mode of " sending up by Resolutions was only permitted by the " Lower House, as accommodative to the Council :"—" and " that the House could lay down one mode, and resume the " other, whenever they deem it expedient." This brings me to page 23, the commencement of the four pages, which comprise the proceedings respecting the Appropriation Bill, the loss of which forms, according to the title, the subject matter of the pamphlet ; every thing ~~therefore~~ introduced having as much connexion with that affair, as Tenterden Steeple with Goodwin Sands. And four such pages of reasoning, so called, or rather so miscalled, never before were written. I am confident that no reader will ever be able to discover the bearing of the argument ; and I am equally sure, that the writer himself, with all his acknowledged ingenuity, never can explain it. It is a common saying with country people, with respect to any difficult matter which may fall in their way, that it would puzzle a Lawyer : and of these four pages of reasoning so called, it is not too much to say, they would puzzle all the Barristers, Attornies and Law Students in the Province, aye, and the very Bench too, to find out the proof of the point in question. Difficult, however, as the Task is,

I must endeavour to guess at the meaning of the Author in these four pages: and if I mistake it, it will not be for want of pains to understand him rightly, nor from any design of misrepresenting him. And for aid in my enquiry, I shall have recourse to the Resolutions of the House, a course of which the Author will not, I hope, be diposed to complain.

The first remark which I shall notice, is that the Council, abandoned their first position, and on this occasion (the discussion of the Appropriation Bill) forgot the principles of the Resolution (passed on the rejection of the Pay Bill.)—Surely this is a misrepresentation. The Council neither abandoned their position, nor forgot the principles of their resolution: but the whole matter had been put by the House in such a new position, that—though the former objection of the Council still held good,—in addition to what is mere matter of opinion and expediency, they could allege against the House a gross and flagrant breach of a constitutional usage: and the Council have only proved themselves to be too good judges of the relative strength of a position to be satisfied with even a good one, when a better one is attainable. He afterwards says:—"but the truth is, an ex post facto "disapprobation of the principles of the Resolution was at "this time becoming *general*, and they would not have again "based any, the lightest, proceeding on so frail and unstable "a foundation." Now this extract in my humble opinion, savours very much of Tooley Street.—I dare say the Honorable Members of the Upper House, who have been in confidential correspondence with this writer, have disapproved of the resolution all along: but it is nearly as presumptuous in them to pronounce what is the *general* sense of the Council upon this point, as for the three honest Tailors in Tooley Street, to set forth their opinions as those of the people of England. But to show that no change has taken place in the sentiments of the Members of Council, except it be against

the pretensions of the House, we need only refer to the names of the Minority on the four divisions, viz :

1st. Feb. 16th, on the rejection of the Pay Bill.

2nd. March 10th, on the rejection of the Resolution of Appropriation.

3d. March 14th, on the declaratory Resolution on rejecting the Appropriation Bill.

4th. March 14th, on the rejection of the Bill itself.

On the 1st division, were the Hon. Messrs. Black, Shore, Peters, Simonds and Allanshaw. On the 2nd. (Mr. Peters being absent,) Messrs. Black, Shore, Allanshaw and Attorney General. On the 3d, Messrs. Black, Shore, Simonds and Attorney General. On the 4th, Messrs. Black and Simonds alone. From the foregoing lists, it appears that the only Members who voted in the minority on all the four divisions, were Messrs. Black and Simonds. It is also well known that, although on the 3rd division Messrs. Shore and Attorney General voted with them, they expressly stated that their objection was, not to the *particular resolution* before the House, but to *any* resolution being adopted at all, conceiving that it would be better to reject the Bill, without assigning any reason for so doing. But it is remarkable, that Mr. Allanshaw who had voted with them on both previous occasions, here forsook them : and to this important fact I wish to draw particular notice, because it furnishes most satisfactory evidence of the falsehood of the vulgar accusation so publicly made against them, that in the Council the question was considered as one merely of pay, and that self, and self-interest operated upon them, to the exclusion of every other feeling.

In the discussion of the Pay Bill, Mr. Allanshaw expressed himself decidedly of opinion, that the Members of the House ought to be paid, and that the Members of Council ought not : and accordingly voted against the rejection of it. To this opinion and vote of Mr. Allanshaw great importance was

attached, and deservedly too, both in the Council and out of it. It was well remembered that he was one of the gentlemen added to the Legislative Council on the division of the Councils: that he was a resident in a distant part of the Province, and therefore had a long distance to travel to his parliamentary duties; and that moreover, he was not a place holder; but a person wholly independent of Government. He was in fact one of the very persons especially in the view of the Minister, when recommending that the Members of Council should be paid. And yet this gentleman voted against the Resolution which asserted, that it was reasonable that they should be paid their expenses; expressed himself willing to serve the Province in his legislative capacity without remuneration; and voted for the usual remuneration being allowed the Assembly. These sentiments he pointedly repeated in the second division, and voted accordingly. That done, he addressed the House in language which will long be remembered. He said that, the Assembly had now exhausted every constitutional method of getting their pay, and had nevertheless failed: the matter must, therefore, now be at rest: and added, *if the House should attempt any thing more, I can go no further; and however much I may regret it, I must here leave my Honorable friend (Mr. Simonds.)* No wonder that a declaration, founded upon such solid grounds, and coming from a gentleman who had previously been a warm advocate in favour of the House—pronounced too before the dangerous and *unconstitutional* step had been taken, should have made a deep impression! Accordingly, when the House did commit the dangerous unconstitutional act, Mr. Allanshaw redeemed his pledge and left his Hon. Friend; and the House divided for rejecting the Bill—Contents 11; Non contents 2. This ~~part~~, together with the numbers on the division, clearly and fully prove that the vulgar abuse bestowed upon the Council is without foundation; that the Bill was rejected not on selfish, but constitutional principles; and that any change

which might have taken place in the sentiments of the Council was adverse, not friendly, to the pretensions of the Assembly.

The author before us next proceeds to consider "how far "the Council are right in the principles of their last Resolution." And here I must confess, I felt keenly disappointed. I had expected that a Gentleman so well informed, and whom there is such strong reason to believe to be a Member of the Legislature, in the examination of highly important principles, would have taken a different course. I expected to find in such an examination some display of law learning, some exhibition of legislative wisdom: I expected to find him bringing forward good and unquestionable authorities, both legal and parliamentary, in support of the position he should assume, and the course of argument he might adopt. But no! never was I so deceived. He lays down no principle whatever, either legal, parliamentary, or constitutional: he makes a few assertions, mostly erroneous, without bringing forward one authority to support them: and makes no reference either to the forms, usages, or principles of British Legislation; nor to the established modes and usages of this Province, founded upon British precedents, this absence of all authority amazed me. The Author must have had access to a number of books: and he must have known where to lay his hand upon such as would suit his purpose. If a Member of the Legislature, he had access to the Library of the House. Then why did he not make use of the advantages he enjoyed? Why did he not, think you? Was it, because he considered it not worth his while to take the trouble? Was it, because he thought his case so very plain, that it needed no authority to support his position? Was it, because he thought the truth of every one of his assertions self-evident? Or was it, because he was addressing himself to plain people, who know little, and care less, about such dry writers as Tidd and Im-

pey ? No : but because he knew (for there is no doubt that he had looked well into the matter) that the whole stream of authority is against the pretensions of the House ;—that there is not an inch of ground on which they can set their foot ; —that the principles, practice, and forms of the British Parliament are entirely against them ;—and that they have been acting in a manner repugnant to the usages and modes of proceeding established in this Province. The Author knew this, and knew it well ; he therefore says nothing about either authority or precedents ; but in order to divert the reader's attention from the point which is really and truly the question at issue—introduces that variety of subjects, most of which have as little to do with the loss of the Appropriation Bill, as had Tenterden Steeple with Goodwin Sands.

To follow an argument which contains no argument at all, is impossible ; I am therefore compelled to leave him, and for myself examine the resolution of Council ; and I feel confident that, upon a fair and candid examination, it will be found not to contain either badly chosen expressions, or strange paradoxes, but wise remarks, and constitutional doctrines. The words of the Resolution have been so often before the public, I need not quote them at length.

1st. It assumes, as a Constitutional principle, that a right of free deliberation on all grants of public money ought not to be confined to one branch of the Legislature, and to that alone, but to be shared by another branch.

2nd. That in this Province that other branch is the Council.

3d. That it is unconstitutional for the House to adopt any mode of passing Money Bills which would infringe upon this right.

4th. That for the Council to submit to it, would be sacrifi-

cing the principles of the Constitution, and the independence of the Council.

I do not mean to say that all these propositions are set forth in this precise order, or these very words; but all of them are clearly deducible from it. I shall therefore proceed to consider them; and shall first shew that it is a Constitutional principle, which admits of no exception among free representative Governments, that the right of free deliberation on money grants is not confined to one branch of the Legislature, to the exclusion of the other branches.

It will assist us in the investigation, if we ascertain what ideas prevailed upon the subject of money grants, in the old American Colonies, at or about the time of the Revolution; because we shall by that means discover, what notions the Loyalists brought with them to this Province. With this view, let us refer to the celebrated declaration drawn up by the Congress of the Nine Colonies, assembled at New-York in October 1765. That declaration asserted, "that it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them, but with their own consent, given personally, or by their representatives." The old Colonists claimed no more than this; this was the extent of their demand. Now who were the parties to this demand, modest as it is compared with the extravagant claims of right, set up by the House of Assembly and their advocates? Ask the Loyalist inhabitants of this Province; and they will tell you,—the very persons who in ten years from the date of the declaration, were in the field, with arms in their hands, in open rebellion against their king.—The very persons who drove them from their homes and properties, to seek for shelter in the wilds of the desert—then asked no more than this. Men of that description were the least likely of any to stop short in *demands*;

yet their demands fall vastly short of the claims put forth by the House of Assembly. Surely this country, the refuge as it has been eloquently called, "*the refuge for suffering loyalty*," is the last place on earth where claims will be tolerated, so far exceeding in extent the demands of meditated rebellion. I am perfectly aware that this does not go to the full extent of the proposition, that two branches of the Legislature must concur in Money grants; but it goes as far as this,—that the representatives of the people, who now claim the sole right of granting and modelling the supplies, to the exclusion of the other branches, at that time claimed only a right to be called upon for their consent, before taxes could be imposed on the people.

But in the United States, as well as in the British Empire, we see the principle under consideration clearly developed. In each nation there are three branches in the Legislature, the King, Lords, and Commons; and the President, Senate, and Representatives. Now in each case, two of these branches have a clear right of free deliberation on all grants; in one the King and Commons; in the other, the Representatives and Senate: the remaining branch, the President and Lords, having only a power of accepting or rejecting. I shall first mention the United States.

In the "Constitution of the United States of America. Article I, Section 7." (it is laid down that) "All Bills "for raising Revenue shall originate in the House of Repre- "sentatives; but the Senate may propose or concur with "amendments as on other bills." The amendments to the Constitution make no alteration in this provision.

In his Commentary on this section of the Constitution, Mr. Justice Story remarks, that the provision, that all Money Bills must originate in the House of Representatives, is beyond all question borrowed from the British House of

Commons, of which it is the ancient and indisputable privilege and right, that all grants shall begin in their House, although the grants are not effectual to all intents and purposes, until they have the assent of the other two branches of the Legislature: and quotes the reason assigned by Mr. Justice Blackstone for the Commons having the sole right of raising and modelling the Supplies, to the exclusion of the Lords, viz., that the Lords being a permanent hereditary body, created at pleasure by the King, are supposed more liable to be influenced by the Crown, and when once influenced, more likely to continue so, than the Commons, who are a temporary elective body freely nominated by the people: it would, therefore, be extremely dangerous to give the Lords any power of framing new taxes for the subject. Now I would submit whether the remark of Blackstone will not apply to this reason, as forcibly, as to that which is generally given, that the supplies are raised upon the body of the people: and that therefore they alone should have the right of taxing themselves. For it is undeniable that a very large share of property is in possession of the Lords; and that this property is equally taxed, as the property of the Commons. It will not, however, be difficult to discover the true reasons for this arrangement, when I come to speak of British Parliamentary proceedings.

This reason of Blackstone's sufficiently answered the purpose of Mr. Justice Story, which was merely to point out such a difference in the position of the House of Lords, and that of the Senate of the United States, as should account for the Senate possessing a power of interfering with bills of Supply, which is denied to the Lords: and this he rests upon the fact, that one is a permanent hereditary body, while the other periodically returns to the common mass of citizens.—This is of no consequence to the argument on which I am employed;—which is to shew the propriety of giving a right

of free deliberation, on all grants of public money, to more than one branch of the Legislature. Upon this head, and upon the more extensive right exercised by the Senate of amending *Money* Bills, as well as all other bills, Mr. Justice Story has these judicious satisfactory remarks (page 447). "There would be no small inconvenience in excluding the "Senate from the exercise of this power of amendment and "alteration; since if any, the slightest, modification were "required in such a Bill to make it either palatable or just, "the Senate would be compelled to reject it, although an "amendment of a single line might make it entirely accepta-"ble to both Houses. Such a practical obstruction to the "legislation of a free government would far outweigh any "supposed theoretical advantages from the possession or "exercise of an exclusive power by the House of Represen-"tatives. Infinite perplexities, and misunderstandings, and "delays would clog the most wholesome legislation. Even "the annual Appropriation Bills might be in danger of a "miscarriage on these accounts: and the most painful dis-"sentions might be introduced."

What an instance of the truth of the case here supposed has the last session of our Legislature exhibited! The Assembly attempted to deprive the Council of their legitimate controul over a Money bill; the consequences of the attempt have been, what Mr. Justice Story has supposed, *the loss of the Appropriation Bill; infinite perplexities, and misunderstandings, and delays, and most painful dissentions!* Having thus clearly established the existence, and propriety, nay the absolute necessity, for the principle I have laid down, in the case of the United States, I proceed now to consider that which is afforded by the British Parliament.

The method of proceeding in matters of Supply in the British Parliament may not, perhaps be generally known.—

At a certain period of the year, estimates of the sum required for the public service in each of the public departments are made out, and forwarded to the Treasury for the inspection of the Lords of the Treasury. These several estimates are there collected, and carefully examined; and, if approved of, the Lords sanction an application to the House of Commons for the amount: and without such sanction, the House will not entertain any application for a grant of public money.—Hatsell says—"Observations on Petitions on matters of Supply, page 175": "the great number of petitions which "were presented to the House of Commons, at the com- "mencement of the Session which began in October 1705, "from persons either claiming an arrear of pay as Officers, "or making some other demand upon the public, made it "necessary for the House to put some restriction upon these "applications; which, being ~~after~~ promoted by members "who were friends to the parties, and carrying with them "the appearance of justice or of charity, induced the rest of "the House to wish well to, or at most to be indifferent to, "their success; and by this means large sums were granted "to private persons improvidently, and sometimes without "sufficient grounds. Very early therefore, in the next session, "Dec 11th, 1706, before any petitions of this sort could be "again offered, the House came to a resolution—"that they "would receive no petition for any sum of money relating to "public service, but what is recommended from the crown." This resolution was ordered to be read "June 11th, 1713, "and then declared to be a standing order of the House. "From this time, whenever any petition which desires relief "by public money is offered, or any motion is made for this "purpose,—before the Speaker puts the question for bring- "ing it up, it has been the practice, in conformity to this "order, that the recommendation of the Crown should be "signified by some member authorised so to do; and if the "Chancellor of the Exchequer, or person usually authorised

" by the Crown, declines to signify this recommendation; the " House cannot properly receive the Petition."

From this extract it clearly appears that neither for the public service, nor for the satisfaction of a demand upon the public; nor for any purpose of charity, will the House of Commons entertain any application, for a grant of public money, unless it comes recommended from the Crown, by some responsible Minister. By this arrangement a right of free deliberation is secured to the King, acting by his Minister, while to the House a similar right of free deliberation is also secured, by the principle—that they have the sole right of raising and modelling the supplies. This done, the Money Bill has received as much discussion as any other bills, having undergone a free deliberation by two branches of the Legislature, the King and Commons; to the Lords, therefore, is allowed only that power, which the King possesses in other bills, of either accepting or rejecting it: and it is proper that they should have a power of rejection, if, from any collision between the Ministers and the House, they think the Commons too lavish or improvident in their grants.

Let us now turn to Provincial affairs. The Loyalists, as we have seen, came to this Province with very moderate ideas as respects taxation.—Their brother Colonists claimed only this—that no taxes should be imposed upon them, but with their own consent, given personally, or by their representatives. As to the mode in which taxes were to be imposed, or their consent given, it appeared to be matter of minor consequence in their estimation. I have carefully looked over the early Journals of the Legislature of this Province, and though there are in many places clear indications of what General Carleton had in view, with respect to voting supplies for the public service, there is no clear developement of his plan, till the opening of the first session of the second As-

sembly in 1793. In his speech, at the opening of the session, he makes a direct allusion to the practice, which I have described before, as established in the House of Commons. He says, "Gentlemen of the Assembly, I have directed the "necessary papers and accounts, together with the *estimates* "*for the year ensuing*, to be laid before you." The answer of the House in the Address to this passage is—"We thank "your Excellency for the directions you have been pleased "to give, that the necessary papers and accounts, together "with *the estimates for the ensuing year*, should be laid be-"fore us." Among the papers laid before the House, Feb. 23d., 1793, is "an estimate of expenses for the public ser-"vice of the Province, for the current year 1793." But although the House declared in their Address, that "they "recognised with perfect satisfaction the maxim,—that their "proceedings should, in every instance, be regulated by that "standard, which on similar occasions, had been established "by the practice of the parent state,—convinced of the pro-"priety of conforming to examples that have been sanctioned "and confirmed by the wisdom of ages,"—it does not appear that they would consent to give to the Governor that right of free deliberation on Money bills, which is exercised in England, by the King acting by his responsible ministers: while at the same time they seem to have tried to exclude the Council from even a portion of that free deliberation, which is possessed by the Senate of the United States. And what was the result of that "vaulting ambition which doth over-leap itself"? Two years afterwards, as might have been expected, the very case occurred, which Mr. Justice Story supposes; and a collision took place between the Council and Assembly, which brought in its train infinite perplexities, and misunderstandings, and delays; a succession of Appropriation Bills were lost (and revenue bills too), and the most painful dissentions were introduced. It is unnecessary at this time to go further into the particulars of this

unhappy dispute or to make extracts from the public documents drawn up on that occasion, except to insert in an Appendix the very able letters of the Duke of Portland, to whom as Secretary for the Colonies, the dispute was referred, both by the Lieutenant Governor, and the House. And I the rather abstain from doing so, because I wish to draw more particular attention to the terms on which the two branches of the Legislature, then at issue, consented to adjust the differences between them. These terms we shall find to be as follows—the Council withdrew the objection they had previously made to any grant of the public money for the attendance of Members of Assembly on General Assembly: while the House consented to give to the Council a right of free deliberation on all grants of Money, thus consenting to share, with another branch of the Legislature, the right of free deliberation on Money grants,—not, however, in the mode adopted in England, where the right is shared with the Crown: nor precisely as that adopted in the United States, where the Senate has a right of amending Money bills; but by submitting to the Council the several resolutions passed by the House, for their concurrence or rejection, before they are inserted in the Bill of Appropriation.

It is worthy of remark that this mode of transacting business has never been satisfactory to the Executive branch of the Legislature; and various attempts were made, both by General Carleton, and General Smyth, to bring into operation the mode adopted in the British Parliament. These attempts are so clearly described in a report of a Committee of the House of Assembly in 1823, that no apology will be deemed necessary for inserting the whole of that highly valuable document.

(Report of the Committee of Privileges.)

"The Committee of Privileges to whom was referred the

Message of His Excellency, with the other documents accompanying the same, to report thereon, beg leave to state,

"That they have made diligent research and inquiry into the usage that has prevailed in the different Legislative Assemblies of this Province, with respect to the subject matter of His Excellency's Message to this House, from their first establishment in the year 1786, until the present time—And the result is as follows, viz :

"That from the year 1786, the period when the Provincial Establishment was completed and the Legislative Assembly instituted, until the year 1793, the mode uniformly pursued by the different Legislative Assemblies, was to include in one Bill all items of Appropriation of what nature soever, as well matters recommended as those that originated with themselves, under the title of "A Bill for appropriating and disposing of the public monies." And during the period above stated, your Committee cannot discover that any objections were ever made to this mode of proceeding by either of the other Branches of the Legislature. During the Session of 1793, they find that an estimate of expenses for the public services of the Province for that year, was laid before the House by order of His Excellency the Lieutenant Governor ; but your Committee, on reference to the Appropriation Bill of that Session, observe that it not only did not make provision for the several objects recommended in the estimate, but that it did embrace various other matters and provisions originated by the House of Assembly ; and your Committee also find that a conference was requested by the Council with the House of Assembly, on the subject of a clause in the Appropriation Bill, granting a certain sum for the purpose of aiding and assisting in the education of Youth, in each Parish of the Province. That the object of the Council in requesting the conference, was to state that the appropriating of money for the education of Children, in the different Parishes of this Province, was a new institution, and necessarily required particular regulations ; and that if appropriations of that nature were included in general Money Bills, the Council would not be left to decide freely on the merits of those regulations ; because, although they disap-

proved of them, they could not reject them, without at the same time rejecting every other article in the general Money Bill; but at the same time observed, *that it is the sole and undoubted right of the House of Assembly, to originate a Money Bill and include therein not only what may be recommended from the Executive Chair, but also such other sums as they think necessary for the Public good, which Bill the Council can neither alter nor amend, but must accept or reject in toto.*— Your Committee cannot find that any further objections were made to the Appropriation Bill of this year, *although it did not provide for measures that were particularly and earnestly recommended from the Executive Chair.*

"That in 1794, the bill of appropriation had also the concurrence and assent of the other branches of the Legislature, notwithstanding it did not make provision for the measures so particularly recommended by His Excellency during the preceding Session, and to which he again called their attention, in his Address to the House of that year.

"That in 1795, the appropriations were sent up by Bill as formerly, which Bill did not make provision (as recommended by His Excellency in his Message to the House) for the payment of certain services that had been performed by his directions.—*The House deeming it their inherent right to consider and determine upon the expediency of all public services to be provided for by them.*

"That a conference was requested by the Council, on the subject matter of the Bill of Appropriation, at which conference the following objections to the Bill were stated on the part of the Council, viz:

"1st.—"That it provides for the services not recommended, which the Council conceive to be unparliamentary"

"2nd.—That some of the services specially recommended by His Excellency in this Session, remain unprovided for, although those services are acknowledged to be for the general defence, and ought therefore to have been among the first objects of provision, while on the contrary greater sums are appropriated for other objects."

"3rd.—"That the appropriating of sums of money to "the several Members for their attendance in General As- "sembly, does not accord with Parliamentary usage."

"To the first of which objections, the House of Assembly replied in the words made use of by the Committee of Council who managed a conference with a Committee of this House on the 9th of March, 1793—*That it is the sole and undoubted right of the House of Assembly, to originate a Money Bill, and to include therein not only what may be recommended from the Executive Chair, but also such other sums as they think necessary for the public good.*

"To the second objection—The House of Assembly observe, *that it is their inherent right to consider and determine upon the expediency of all public services recommended to them to be provided for*—That the services in question are military expenditures, and that all expenditures on military works in Canada, Nova-Scotia, and Newfoundland, for the purposes of public defence, have invariably been included in the extraordinaries of the army, and annually presented to the House of Commons, by the Secretary at War, in the estimate of Army Extraordinaries.

"To the third objection, the House of Assembly observe, that the payment of Members serving in Parliament, is constitutional and agreeably to the ancient usage and custom of Parliament—That the circumstances and situation of this Province, render any other mode of payment than that hitherto invariably adopted by the Legislature, inexpedient. That the same is conformable to precedents in our own Acts of Assembly (from which the House will not depart without good cause) and hath in estimates of expences laid before the House by order of His Excellency the Lieutenant-Governor, been recommended to be provided for as a Public Service. And the House of Assembly further declare, that they consider the words made use of in the second objection of the Council to the Bill, "and ought therefore to have been among the first objects of provision, while on the contrary, greater sums are appropriated for other objects," *as a reflection upon their proceedings, and an infringement of the privileges of the House of Assembly.*

" That your Committee find at a subsequent conference between the Council and Assembly, that *the committee of Council were pleased to admit the truth of the premises stated in the answer to the House of Assembly to the second objection urged by the Council against the Bill*, but in consequence of a Resolution of the Council declaring the usage of the House of Assembly, with regard to their Appropriation Bills, contrary to Parliamentary usage; and the same being considered by the Committee of Council in the nature of an Instruction to them, and from which they were not at liberty to depart, it precluded the Committee of Assembly from going into a full investigation of the *first* and *third* objections of the Council to the Bill. And the House being prorogued on the following day, the Appropriation Bill of that year did not receive the concurrence and assent of the other branches of the Legislature.

" That in 1796, the Appropriation Bill was sent to the Council for the concurrence under the title of " A Bill for raising a Revenue in this Province, and for appropriating the same, together with the monies now in the Treasury."—Your Committee would here observe, that it did not contain provision for expenses incurred by the direction of His Excellency the Lieutenant Governor; the payment of which he particularly recommended to the House in his Address of that year, but as heretofore, it embraced various matters not recommended, and entirely different in their nature.—On the subject matter of this Bill, a conference was requested by the Council with the House, when objections to the following effect were made by the Council to the Bill.

" That the different objects and services were so mixed " in the Bill as to preclude them from a free and distinct " consideration of each service provided for and each article " taxed—That it nominated persons for the performance of " public services—That it provided in an unconstitutional " manner for the wages of the Members of the House of " Assembly, by taking the same out of the Public Treasury, " instead of receiving it from their respective Constituents, " &c. &c."

"To the first of which objections, the House replied—"That it was couched in such vague and general terms, as to render it impossible for them to speak specifically to the objects and services which were alledged in it, to be mixed in the Bill; *but that if the Council expected that each service provided for, and each article taxed, should be sent up to them in a distinct and separate Bill, for their approbation or rejection, the House considered such mode of proceeding would be contrary to all Parliamentary precedents,* and that if the mixture of objects and services generally alluded to in it, was meant to refer to the appropriation of the Revenue of that year in the Act which raises it, the House cannot help considering the insertion as an infringement of the privileges of the House of Assembly, *who alone possess the right of disposing, as well as raising the public money, and in such manner as they only think proper*—That the Bill is confined to one general object, the grant of supplies for the ordinary services and expenses of Government, and many Acts of Parliament comprehend a much greater variety of objects and services than are included in the present Bill."

"That your committee find at a subsequent conference, it was admitted on the part of the Council, *that it was not expected of the Legislative Assembly, to send up for their approbation or rejection, in a separate Bill, each service provided for, and each article taxed; and that it was not unparliamentary to appropriate the Revenue of the year in the Act that raises it,* but that it had not been ever practised in this Province, and that in case of disagreement of opinion between the two houses, upon any one article of either, the loss of the Revenue and Appropriation would be the consequence.

"The Revenue and Appropriation Bill did not pass the other branches of the Legislature at this Session.

"That in 1798, the Appropriations were sent up to the Council for their concurrence, under the title of "A Bill for raising a Revenue in this Province, and for appropriating the monies arising therefrom to the public services therein mentioned.—Which Bill did not provide for the recommendations of His Excellency, and was similar in its provision to those of the preceding Sessions.

" That in 1799, your Committee find the following Resolutions, on the Journals of the House of Assembly :—viz.

" Resolved, that by the Bills for paying off the debts " of the Province for the year 1795, having passed the " Council, there thereby now remains no misunderstand- " ing between the two Branches of the Legislature as to the " appropriation of public monies."

" Resolved, that to prevent in future any misunderstand- " ing, this House will propose a conference with the Council, " for the purpose of agreeing on a general plan for expedi- " ting Revenue and Appropriation Bills."

" The result of the conference, your Committee cannot find stated on the Journals of the House of Assembly ; but they discover at the next Session of 1801, that the several resolutions for grants of money were sent up to the Council for their concurrence, and such items of Appropriations as were returned from them approved of, were included in a Bill, under the title of " A Bill for appropriating certain monies for defraying the expenses of the Province," and sent again to the Council, in the usual way, for their concurrence. And your Committee find that this concession on the part of the Assembly, of their acknowledged rights, has been acceded to by the different Legislative Assemblies of this Province, from that period until the present Session ; and they would here particularly remark, that during the period before stated, they cannot discover any one instance of a single item of Appropriation being included in the Appro[illegible]tion Bill, that had previously been rejected by the Council, although they find many instances of the arbitrary abuse of this unconstitutional power on the part of that Branch of the Legislature ; and they cannot but express their surprise at the resolution of the Council on the 22d of March last, as a pledge to His Excellency to support him in His Message to this House, and do consider it *an unconstitutional interference with the acknowledged rights and privileges of this House, a reflection upon its proceedings, and as stipulating conditions to this House for the passing of its Bills.*

" But your Committee taking into consideration that

the resolution of the Council above alluded to, was not adopted by the unanimous voice of that Body, but on the contrary, that but few of its Members were present at the time it was brought forward, and that four only of the Members present were in favour of it; all of whom, in the situation of Executive Counsellors, had recommended the Message of His Excellency to this House, and consequently, in their Legislative capacity, considered themselves obligated to give their assent to it, as a pledge to support him in the same, do not consider the resolution as the deliberative Act of the Council, and consequently do not feel a disposition to animadvert on it as it most justly merits, and as they would otherwise feel it incumbent on them to do.

"The Message of His Excellency, your Committee think fully replied to by the Constitutional Authorities, advanced by the Legislative Assemblies in their several conferences with the Council, on the same subject as stated in this Report; but your Committee cannot but express their surprise, that His Excellency should at the last Session make that matter a subject of complaint, which in His Address to this House at a former Session, he particularly recommended to be adopted: your Committee here allude to the permanent provision for the expenses of the Legislature, particularly recommended by His Excellency in His Speech to this House in 1821, which was accordingly made by a Law at that Session, which Law at the time of His Excellency's Message, had not been disapproved of by His Majesty, but on the contrary has had the Royal Sanction.

"And your Committee would further observe, that they are equally surprised at the paragraph in the letter of Earl Bathurst, in reply to His Excellency's communication to him on the subject of his Message, which states "the privilege claimed by them of appropriating the public monies without intervention of the other Branches of the Legislature," and they can account for it in no other manner than by the conclusion that his Lordship had not correctly conceived the communication of His Excellency, otherwise they are of opinion it would have appeared most evident to his Lordship, that by the mode now practised by the House of Assembly,

of sending up to the Council, for their concurrence or rejection, each item of appropriation previous to its being included in the Appropriation Bill, a free and distinct consideration of each matter embraced in it, is given to that Branch of the Legislature.

" That from this review of the proceedings of the former Houses of Assembly of this Province, your Committee have drawn the following conclusions :

" That the Legislative Assembly of this Province, have at all times claimed the Constitutional right, not only to raise the public money, but to direct and limit the services to which it is to be applied :

" That they have claimed the right to direct and limit those services, whether they have been recommended from the Executive Chair or not :

" That they have claimed, and at all times have exercised the right of including in their Appropriation Bills, services of a different nature.

" And your Committee beg leave to state, that they can see no good cause for the House departing from the usages and modes of proceeding hitherto pursued by the former Houses of Assembly of this Province.

" All of which is respectfully submitted to this Honourable House."

HUGH JOHNSTON, Junr.
P. FRASER,
HARRY PETERS.

Ordered that the Report be accepted.

The right of free deliberation in two of the three Branches of the Legislature being thus established as Constitutional, no matter in which Branches, or in what mode effected,—whether in the Crown and Commons, or Senate and Representatives, or Council and Assembly ; nor whether the mode be by recommendation from the Crown with the concurrence of the Commons, or by bill from the Representatives, with right of amending it in the Senate, or by resolution of Assembly with the concurrence of Council,—it follows, as a necessary inevitable consequence, that any violent attempt on the part of either branch to subvert this arrangement, is unconstitutional ; and a submission on the part of the other Branch to such attempt, would be a disgraceful sacrifice of the principles of the Constitution, and of the independence of that branch.

But how far a change, *to be effected by mutual agreement between the several branches of the Legislature*, might or might not be advantageous, is a question I am not prepared to answer. Each mode has its advantages and inconveniences: We have very high authority in Mr. Huskisson, for saying that the present mode by Resolution has been attended with the best consequences: it is not, however, free from great inconveniences, some of which tend greatly to lower the dignity of the House. If no petitions for money were to be received, nor grants of money considered by the House, unless they came recommended by the Governor, which is the English practice, and also that of the Canadas,—that disgraceful scramble which takes place every session in the Committee of Supply, would be avoided. No member would then have it in his power to move a grant of public money for the benefit, direct, or indirect, or in compliance with the wish, of one of his active canvassers. No opportunity would then be given to one member to charge another member, with striving to get an undue portion of a great-road grant

laid out upon such a district, because he was himself the Supervisor of it; nor for that member to throw back the charge in the teeth of his accuser, by saying, that the object of his opposition was to get an undue share for the other district, because the Supervisor had been mainly instrumental in securing his election. It would then never be necessary for a member repeatedly to move that the Committee of Supply should report progress, because they were not in a proper frame of mind, were too much excited, to trust themselves to vote away the money of their constituents. These scenes would be avoided, and if so, it would I am sure, add much to the dignity of the House.

"There is nothing which is so dangerous, or which ought to be so seduously avoided, as trusting to an irresponsible public body, the sole right of disposing of the public money. It is of daily occurrence that men do, when united in bodies, things which, if done by individuals, would overwhelm them with shame and disgrace: and they do them without compunction, because the shame which if concentrated would press an individual to the earth, would be light when divided and diffused over so many. It was no doubt a consciousness of the danger which attends possession of this *sole right*, that induced the House of Commons to throw off themselves, upon the responsible ministers of the Crown, the responsibility of originating money grants, and it was no doubt a similar consciousness of danger, which led to the solemn compact between the two Houses of the Legislature in 1799, so ably detailed in the Report of the Committee of Privileges in 1823. They could not invent, with all their ingenuity, a scheme more fraught with danger to the Country, nor with trouble and annoyance to themselves than that of claiming and securing a sole right to grant and model the supplies, freed from the controul which the Crown and its responsible ministers now possess over the House of Commons, and at

the same time unrestrained by that superintendance over their proceedings which the Council now possess.

How often has a Member succeeded in putting off an importunate suitor for a slice of the public loaf, by telling him that it would be quite useless for him to make any such attempt, for that if he should get the grant through the House, the Council would not concur! and how often have Members allowed grants to pass through the House, because they did not like to offend the parties for whose benefit they were designed; knowing full well that the Council would do what they did not dare do—reject the grant! But could they thus throw off from themselves upon the Council, all this odium, if they had the power of perfecting, as well as originating money grants? No, they could not. And is not this supervision of the Council salutary and even necessary? Let the last Session speak for itself. The report of the Finance Committee strongly recommended strict and rigid economy, yet look at the numerous grants rejected by the Council, many of them of such sort, that the advocates of the House now declare they might well have been postponed, or even passed over altogether. I ask—without, however, the least desire of giving offence to any one—if the House of Assembly of this Province is in general composed of such materials, as to justify the extraordinary demand they now make for release from all restrictions? Are the Members in general, persons to whom in other matters the country would be disposed to give, in addition to their irresponsibility, a total exemption from all controul? Surely not;—the country, however rashly they may act when under the influence of momentary excitement, when that excitement ceases, will never consent that their Representatives shall be relieved, both from the initiatory restraints which have been imposed upon, or which the House of Commons have imposed upon themselves; and also from the subsequent revision of their

proceedings, which is practised by the Senate of the United States: and which the House of Assembly of 1799, with a wisdom and moderation alike honorable to themselves, and useful and acceptable to the country, thought fit to offer to the Council. Never, no never, should any one public irresponsible body be entrusted with the sole right of granting away the public money. But still, if the House of Assembly, under the influence of that reverence for the institutions of the Mother Country, which is the glory and pride of British subjects, should wish to exchange for the present system of transacting Legislative business, that adopted by the House of Commons, there would not, I am sure, be the least objection offered to the alteration in any quarter. Let the House pass a standing order in the precise terms of that of the House of Commons of 1705—declaring that they never will make a grant of money for any public service, which does not come recommended by the Governor; and then honestly and fairly act up to it:—then would the Council without doubt absolve them from their obligation to the observance of the compact of 1799, and not in a greater degree interfere with Money Bills, than do the House of Lords.

But

Before any alteration is made, let the circumstances which led to the adoption of the resolution system be fairly and dispassionately considered. Several attempts have been made to throw discredit upon it. At one time it was said, that the agreement between the Speakers of the two Houses was not sanctioned by the House, but was the mere act of Mr. Botsford, the Speaker, unauthorised by the House, and disapproved of by its members; and that submitting to it as they have done for so many years the House have been guilty of sacrificing their constitutional rights and privileges. The advocates of the House seem to attach great importance to this, and have laboured the point very sedulously but I think very unfairly.

It is true, as the report of the House of 1820 says, that there is no specific mention in the Journals of the Assembly, of the agreement between the Speakers; but there is enough recorded to shew beyond contradiction both what that agreement was,—how entered into,—by whom proposed,—and in what manner acted upon. But let us first see who were members of the House at that time. The Journals tells us—Messrs. Pagan, Attorney General Bliss, Simonds, Gilbert, Younghusband and Smith, for St. John: Messrs. Botsford, Gay, Siddall and Dixon, for Westmoreland: Messrs. Pagan, Campbell, Lindsey and Mowatt, for Charlotte: Messrs. Murray, Elligood, M'Lean and Agnew, for York: Messrs. Fraser and Lee, for Northumberland: Messrs. Coffin and Leonard, for King's: Messrs. Peters and Yeomans, for Queen's: Messrs. Glennie and Street, for Sunbury.

3 Parl. 1795

Now I would take the liberty of asking the sons of these Gentlemen, whether they think it at all probable, that their Father's could have been either so negligent of their own rights, so faithless to the trust reposed in them by their constituents, as to surrender without sufficient reason one of the dearest privileges of the subject: or so weak and foolish as to be tricked into a measure which their better judgement would condemn. Among the members of the two Houses are several gentlemen who are either sons, or grandsons, or nephews, or have married daughters, neices, or grand daughters of the persons who were in the Legislature at that time. And will *they* stand forward, and impeach the character of their deceased relatives; and in the face of the country charge them, with having been wicked enough to barter away the people's rights,—those rights which they were elected,—were *sworn* to maintain: or weak enough to suffer themselves to be tricked by Mr. Botsford? Take the list as it stands. The name of Mr. James Simonds almost at the head of it: in the Council there is a son of that gentleman, and a gentleman

who has married his grand-daughter: while in the House, there is also a son, and two gentlemen who have each married a grand-daughter of his. There is a nephew of Mr. Gilbert's in the House, and a son-in-law of Mr. Younghusband's. In Council, a grand-son of Mr. Botsford's, and in the House a gentleman who has married his grand-daughter. In Council, are two sons of Mr. Peters, and two gentlemen who have each married a grand-daughter of his. In Council is a nephew of Mr. Elligood's, and also a gentleman who has married his neice. And in the House is a son of Mr. Street's.

The Members of Council who attended the Session of 1799, were Hon. Messrs. Chief Justice Ludlow, G. G. Ludlow, Justice Allen, Justice Winslow, Hazen, Bliss, Justice Saunders, Robinson, Odell, and Leonard—The names of Messrs. Justice Upham and Billopp do not appear on the Journals. Of the Chief Justice there is in the House a grandson; and also a son of Judge Allen's. In Council is a son and two grand-sons of Mr. Hazen. A gentleman who has married a grand-daughter of Mr. Odell's, and a son and son-in-law of Judge Saunders: and of Mr. Robinson two sons are in Council. Now most of these gentlemen took an active part in bringing about the agreement. Shall their memory be now insulted for that transaction? Shall their *sons* now stand forward, and in the face of the country charge them with either wickedness or weakness? Shall their very *children* whom they nourished and brought up, seek to rob them of their fair, their well earned fame; to degrade them from the high place which they have hitherto deservedly occupied in the public estimation! No for the credit of the Country, for the credit of human nature, let it not be said that to promote a *temporary party purpose*, a *son* has been the person, to cast the first stone at his Father's memory! I should hope that we may be spared so humiliating a spectacle!

But I will go a step further ; and ask them, whether they will permit such language as the following, every expression of which I have extracted from only one of the many articles which have lately appeared in the Observer, to be applied to their Fathers, or to arrangements made by them. "*The miserable system agreed on by the Speakers.*" "*The Representatives of the People—bartered away one of their most important privileges*"—"*sacrificed the rights of their constituents*"—"*this concession of the Assembly was corrupt and unjustifiable*"—"*rights were treacherously surrendered*"—"*they basely yielded to another Branch one of their undoubted rights*"—"*betrayed their rights*"—"*the slavish and contemptible system of appropriation*"—"*the wretched degrading system.*" Will they permit any one to charge them with having introduced, or been tricked into a *miserable, slavish, contemptible, wretched, degrading* system ; and with having *corruptly, unjustifiably, treacherously, basely, betrayed, bartered away, sacrificed, surrendered, yielded up the rights of the people ?* Will they allow the memory of their *Fathers* to be thus insulted by a Newspaper hireling, by a thing that is paid by the line for the abuse which he thus bestows upon those that are no more ? Let him revile the living if he choose—they have their remedy : they can either treat him with silent contempt, or bring him to account : but let him in common decency forbear to insult the dead ! !—They never will permit it : let it not be laid to the charge of the members of either House, who are, as I have shewn, related to those gentlemen,—that out of filial respect for the memory of the departed, if from no other motive, they resist the destruction of a plan which comes recommended, not less by its intrinsic excellence, than by the part which their deceased relatives took in it.—

> Di tibi, si qua pios respectant mumina, si quid
> Usquam justitiæ est, et mens sibi conscia recti,
> Præmia digna ferant.

Let us now look at the *political* character of some of the principal members of the House. One of the most conspicuous persons among them was the late Chief Justice Bliss, a Gentleman of deep erudition and extensive acquirements both legal and political, who though holding the high and responsible office of Attorney General, was ever esteemed in every point of view, a thoroughly independent Member. But the leaders of the popular party seem to have been Mr. Robert Pagan and Mr. Glennie. As a leader of the popular party in the Legislatnre, Mr. Pagan has ever stood high in popular estimation. No one ever could with truth lay to his charge, that he was afraid to do what he considered his duty, or to follow out what he supposed to be a correct principle:—no one can charge him with trimming, or seeking to curry either Court or *Council* favour: on the contrary, he has always been looked up to as one of the ablest, boldest, and firmest supporters of popular rights. The sentiments of Mr. Glennie are recorded by himself. I have before me his address to the freeholders of Sunbury, at the opening of the Poll, for the election of this very House; and shall transcribe those parts in which he describes himself, his conduct, and his principles. In his speech he enumerates a number of instances, in which what he calls salutary and beneficial Bills were lost to the Country through the opposition of the Council. He declares himself alive to the ambitious views of the Council; and expresses the utmost unwillingness to accede to the proposition of the Governor supported by the Council, viz, the granting of public money for no other purposes, "than those recommended by His Excellency, or (which comes to the same thing) than those which they choose to advise him to recommend, as they are a Council of advice, as well as legislation.—An acquiescence in this in the part of your representatives, I was then of opinion, and am so still, would have been tantamount to an absolute surrender of your purses, property, rights and liberties into the hands of the

Council at once. But they spurned the idea of ever assenting to such doctrine, and acted on the occasion with that temper, firmness and spirit which became the representative body of the people. It is a proposition to which I hope in God, no House of Assembly will ever give its assent."—In regard to the qualifications of Representatives he says, that as a "vigilant opposition has ever been found necessary in the House of Commons, to preserve the rights and liberties of the people in Great Britain, it must certainly be doubly requisite here, *where from the Councillors holding their seats only during pleasure, and from the Judges having seats therein, who are liable to be dismissed at a moment's notice, and from the Council being Executive as well as Legislative,* two branches of the Legislature are in a great measure thrown into one scale," and closes by recommending himself to the Elector's notice, in these words—"I have never made a sacrifice of your rights and liberties to please any man or *set of men.*—I have never shrunk from the discharge of those duties, I owed to you or the community at large for fear of offending any man.—I have ever opposed to the utmost of my power, measures which I conceived to be unconstitutional, dangerous in their tendency, or injurious to your real interests and those of the public.—And should you think it proper to choose me on this occasion, you will, I flatter myself, find me to be as watchful a guardian of your liberties and privileges, and as attentive to your convenience, prosperity and happiness, as, I am conscious I hitherto have been."

Thus premised—let us see what was done. Journals, Vol. 1, page 620, 1799. "A Message from the Council, informs the House that the Council has concurred in passing the long disputed Bills of Appropriation. Whereupon on motion of Mr. Robert Pagan" Resolved, that by these Bills having passed the Council, there thereby now remains no misunderstanding between the two Branches of the Legislature as to the appropriations of public monies.

"Resolved, *that to prevent in future any misunderstanding this House will propose a conference with the Council for the purpose of agreeing on a general plan for expediting Revenue and Appropriation Bills.*" This Resolution moved, as we see by Mr. R. Pagan, *passed without opposition.*

The plan agreed upon is not recorded on the Journals. Why the British practice was not adopted, will perhaps appear from Mr. Glennie's speech above quoted. The probability is, that so many of the Members had in a similar way pledged themselves to their constituents, not to agree to the recommendation plan, that they felt themselves obliged out of a decent regard for their public character, to seek some method different in its mode of operation, though in effect equally efficacious. Accordingly the Resolution system was determined on.

In 1801, (p. 645,) it appears that the Chairman of the Committee of Supply (Messrs. Bliss, Pagan, and *Simonds* being present) "was directed to report it as the opinion of the Committee, that the foregoing Resolutions, for granting the several sums of money, *be sent up to the Council for their concurrence.* Ordered, that the consideration of the said report be postponed until to-morrow." This delay was sought to enable Mr. Pagan to bring forward a Resolution, condemning the application of certain sums granted for paying the debts of the Province, to building the Province Hall at Fredericton.

The next day (p. 647,) Messrs. Bliss, Pagan, *Simonds* and Glennie being present,) Ordered, that the said report be accepted, and that the several *resolutions for granting sums of Money be sent to the Council for their concurrence.*

(Page 648,) "Ordered, that Mr. Robert Pagan and Col. Coffin, do carry up to *the Council the resolutions* for

granting the several sums of money voted in the Committee of Supply *for their concurrence.*"

(Page 650,) A Message from the Council informing the House, that the *Council do concur in the Resolutions,* which were yesterday sent up for their consideration.

In 1802, Council Journals p. 275, we find the following explanatory entry, reciting the terms of the agreement which were not inserted in the Journals of the House. "In order to prevent the danger of losing Bills of Supply, or Appropriation, on account of any disputed points therein contained, the Legislative Council and the Assembly agreed, in the course of their last meeting, by their Speakers, (Chief Justice Ludlow and Mr. Botsford,) that the several particulars proposed by the House of Assembly, to be at any time inserted in such Bills, should be previously sent up in the form of *Resolutions for the consideration of the Council,* and that this mode should be constantly observed:—and in pursuance of this agreement, thus established and acted upon, in the last Session, the *Resolutions of Appropriation have been sent up in this present Session* and considered by this House."

In 1803 we find, Journals p. 679, the House in Committee of Supply, Mr. Robert Pagan in the Chair, (Messrs. Bliss, *Simonds,* and Glenie present,) that sundry resolutions were agreed to and ordered that they "*be sent to the Council for their concurrence.*" And p. 681, Messrs. R. Pagan, Leonard and Gilbert were appointed a Committee for bringing in a Bill of Appropriation. p. 682, the Bill was brought in and read a first and second time: p. 683, the House in committee again went into consideration of the Bill. The Speaker having resumed the Chair, the Chairman reported—that the Committee had made progress in the business to them referred, and had directed him to report it as their opinion

that the *Resolutions voted in the Committee of Supply, be sent up to the Council for their concurrence.*"

Here is a clear indication of wavering in a part of the House, not however a majority: but this will easily be accounted for, by those who recollect, that this Session was rendered famous by a dispute between the House and the Governor, on the appointment of Clerk to the House, and by the ever-memorable contest between the Standfasts and Runaways. At this time some very able pamphlets were written, the perusal of which would amply repay any one for his pains; and which serve to shew, to what unjustifiable lengths men may be carried in the heat of passion; and how very frequently, self interest, self aggrandizement, and personal animosity, assume the appearance of pure patriotic virtue. But notwithstanding the Council withheld their concurrence from some particular items, the plan was persevered in, *and has been constantly acted upon up to the late Session.* And why at this time such a plan of operations, in every respect so well adapted to the necesities, and peculiar situation of the Province, should be assailed, and endeavours made to set it aside, can be accounted for only on the supposition, that either the agitation of the question, or the destruction of the system, will answer some *present purpose* in the contemplation of *certain* individuals. Thus much upon the claim; now for the method adopted by the House to enforce it.—Notwithstanding the practice of sending to the Council all the Resolutions in a separate shape, for their free deliberation, and inserting in the Appropriation Bills only such as met their concurrence, yet to guard against the inconveniences which would result to the Country, from the loss of all the Appropriations for the year, it has been customary to send them up, for the Governor's assent, in three separate Bills; so that should he be advised to reject one of them the others might be saved. They have usually been divided into

three Bills, viz: Great Roads, Ordinary, and Miscellaneous Services. The author before us has told us how many various opinions were floating through the House, as to the proper bill, to which the resolution of Appropriation rejected by the Council, should be tacked; and that at last it was determined to tack all the three Bills together, and to tack to the end of them, so tacked together, the rejected resolution. Numerous and disgraceful were the blunders committed while the House was perpetrating this desperate deed! If they had tried their utmost, they could not have added one more to the shameful catalogue. It is not so much, however, the overt act which is to be regarded, as the violation of principle. Upon the violent attempt to deprive the Council of their right of free delibe[illegible] I have already spoken. I have now to offer a few observations on the dangerous, and unconstitutional proceeding of *tacking*, to which the House so desperately resorted: and for this purpose shall again have recourse to Hatsell's Proceedings, and Precedents. Tit. Bills tacked to Bills of Supply. "Whenever" he says, "this measure "of *tacking* to a Bill of Supply is attempted by the House "of Commons, with an intention of thereby compelling the "Crown or the Lords to give their assent to a Bill, which "they would otherwise disapprove of and reject, it is highly "*irregular*; and is a breach of those Parliamentary rules "and orders which have been established, by long and uni-"form practice, between the two Houses, in the mode of "passing Bills.—But to do this in cases where it is *known* "*that one of the component parts of the Bill will be disagreea-*"*ble* to the Crown, or to the Lords; and that, if it went up "alone, it would not be agreed to"—(how much stronger than this supposed case, is the one now before us! for here, the component part had actually been twice sent up, and *not agreed to*)—"upon this account, and with a view to secure "the Royal assent, or the concurrence of the Lords, to tack "it to a Bill of Supply, which the exigencies of the state

" make necessary,—*is a proceeding highly dangerous and un-*
" *constitutional.* It tends to provoke the other branches of
" the Legislature in their turn, to depart from those rules,
" to which the long established forms of parliament have
" confined them ; and can have no other effect, than finally
" to introduce disorder and confusion" (And yet this desperate, dangerous, *unconstitutional* proceeding found some advocates among the Members of Council. Strange infatuation !) " the Commons are, by the practice of Parliament
" entitled to insist ' that the Lords shall make no alteration
" in a Bill of Supply' : but to avail themselves of this right,
" and hereby to refuse to the House of Lords the exercise of
" that privilege which they have as one of the branches of
" the Legislature, to give their dissent to a proposition they
" disapprove of,—without at the same time being obliged to
" reject the Supply which the public necessity demand, and
" which they are ready and desirous to grant—is to confound
" the rights which belong to the two Houses of Parliament,
" and thereby to introduce and encourage proceedings which
" must in their consequences, prove dangerous to the constitution." (Could Members of Council, for the sake of a little brief popularity, be found to give countenance to so dangerous a proceeding, and afterwards, in a Protest, to call it constitutional ! 'Tis strange, 'tis passing strange ! " In
" short, however desirable the end may be, which is at any
" time aimed at by this measure, the means are always bad,
—it is much safer to trust to time" (In the case before us, no injury could possibly have arisen to any body, if the question of the Members' Pay had stood over to the next Session,"
" and to circumstances, which sooner or later dispose the
" minds of men to accept and approve of such propositions
" as are really for the public good, than to obtain even the
" best of bills" (much less their own pay,) " by breaking
" down those bonds and fences, which the wisdom of past
" ages has set up, and to let in disorder and confusion, which

" may finally prove *fatal to the security, perhaps to the exis-*
" *tence of the Constitution.*"

This passage is so accurately descriptive of the proceedings of the Assembly, and expresses in such strong terms a condemnation of them, as dangerous and unconstitutional, that it is quite unnecessary to dwell longer upon that part of the subject. I shall pass on to other proceedings of their's, quite as dangerous and unconstitutional.

In the character of the late House, (I mean that which sat from 1830 to the last election,) and also that of the present House, (if we may judge from the proceedings of the last session,) no feature appeared more prominent, than a disposition to set up a resolution of their own, above the Law of the Land; to exercise a power of dispensing with the Law, not indeed by Proclamation, but by Resolution: and a determination to encroach on the privileges of the Council, and the rights of the Executive. Such a disposition has not often been wanting in the Lower House; but from the time I speak of,—whether from the predominance of some particular faction in the House, or from the impulse which radical principles received in many places, from the Revolution in France, I cannot say;—but instances of such dangerous and unconstitutional attempts are of unusually frequent recurrence.—And yet it is truly astonishing to observe, how little attention has been paid, on the part of the public, to the glaring attempts of the House, to assume to themselves powers not given to them by the Constitution. Is it, as Hallam remarks, that men never regard *that* as tyranny, which costs them nothing; and that people would see innocent men dragged to prison and the scaffold without attention, who yet would break out into open rebellion, to resist what they might consider an unparliamentary tax? Be that as it may, the fact is capable of proof. Without entering very deeply into parti-

culars, it may suffice to adduce, as instances, the Resolution of the House to put a particular construction upon the terms in which the disqualification for a seat in the House is expressed (by reason of the person being a Religious Teacher) after they had failed to accomplish the same object by a Law: the petition to the King, which was adopted, complaining that the Council would not pass a Bill to authorize Dissenting Preachers to Solemnize Marriage: the attempt made, in the case of Captain Spearman and Captain Jones, to extend their privilege of speech, to a privilege of printing and publishing: the resolution passed, that it is inexpedient, and unnecessary, that any part of the Ordinary Revenues of the Province should be applied to the support of the College, when the Law says, that a thousand pounds sterling shall be so applied: and not to mention other instances which might be brought forward,—that of the late Session, respecting the pay of Adjutants of Militia,—"that no provision for this service will in future be made," when the Law expressly allows to each of those Officers the sum of Fifteen pounds. I mention this particularly, because it stands connected with other, and those very important considerations.

Now there is nothing which, from the very first, the King's government appear to have had more at heart, than the having, in each of the Provinces, an efficient well organised Militia: in proof of which, I shall transcribe that part of the first speech of each of our four Governors which relates to the Militia.

Speech of General Carleton, 1787. "As I am persuaded you will cheerfully adopt every measure which shall be "conducive to these ends, I must call your attention to the "means necessary for our defence, without which we can "scarcely hope for permanent security. The first step to "be taken in this business is the establishment of a provin-

" cial Militia : it being of the highest importance, that the " military experience of the inhabitants should not be last " amidst their present peaceful employments. We ought " carefully to shun the danger of resting our fate on the quiet " temper of foreign states, nor should we ever rely on any " other than our own arm for immediate protection. A well " regulated Milita will at all times prove our surest safeguard ; " and perhaps, after what we have experienced, no people " could be more inexcusable, should we be found in this re- " spect unprepared for emergencies ; and I am confident, " from the zeal you have shewn to forward the increase and " welfare of the Province, you will not delay to make use of " the resources within your power, for fixing its stability." " In their Address, the Council reply—" The establishment " of a Provincial Militia, we conceive to be absolutely neces- " sary ; and we shall concur cheerfully in such regulations " as will enable your Excellency to avail yourself of our in- " ternal strength"—while the House reply—" The import- " ance of the establishment of a Provincial Militia—is too " obvious to be overlooked :—we cannot easily express the " grateful sense we entertain of the continued anxiety dis- " covered by your Excellency, to promote every object con- " ducive to our stability and welfare ; and you may assuredly " rely on our most zealous co-operation in effecting the es- " tablishment you now so earnestly recommend."

Speech of General Smyth, 1813. " The principal ob- " ject that presents itself for your consideration is the revision " of the Militia Law, with such additions and amendments as " may be requisite." 1816. The year after the general peace. " The most important objects that I have to recommend to " your deliberation, (after what concerns the Revenue, and " the ordinary exigences of the Province) are the renewal of " the Militia Law.—I shall not dwell upon the evident im- " portance of the establishment of such a Militia Law, as

" will enable the loyalty of the Province to be brought for-
" ward in its defence, upon any sudden emergency, however
" apparently unnecessary it may be to anticipate such a call
" in our present state of peace."

Speech of Sir Howard Douglas, 1825. " Fully impres-
" sed with the importance of attending to the efficiency of the
" Militia; I have derived much satisfaction from what I
" have witnessed of their appearance and public spirit. The
" Militia Law will have to pass under your revision generally"
—1828, 1829. " I have great satisfaction in acquainting
" you that, in compliance with my representations, a measure
" has been adopted by His Majesty's government, for com-
" pleting the armament of all the Militia forces of this Pro-
" vince, without any charge upon its local funds. Confident
" now, in the full efficiency of an excellent Militia system, to
" the formation of which my attention has long been devoted,
" and which you have enabled me to establish by law ;—pro-
" vided with every requisite by which to render that system
" practically efficient, when necessary :—I congratulate you
" on the perfection of a measure upon which so much reli-
" ance may be justly placed in the day of need ; and which by
" a judicious exercise of the powers vested in me, will be
" lightly felt by the people, when no need is. I recommend
" this system to your continued support, in all its essential
" provisions."

Speech of Sir Archibald Campbell, 1832. " I earnestly
" recommend to your continued protection, the defensive
" force of the Province. An efficient and well organized
" Militia is the constitutional bulwark of a brave and loyal
" people; and is therefore well entitled to the full benefit of
" your countenance and support. On this head, in obedi-
" ence to the King's command, I shall have occasion to ad-
" dress you by special message."

It is impossible to read these extracts from the speeches of different Governors, extending over a period of nearly half a century, some written in time of war, others in time of peace, without being satisfied of the anxious desire of His Majesty's Government for an efficient Militia force in this Province.—If any one should require further proof of the existence of such a desire, let him look at the Despatch of Lord Goderich, July 8, 1831, on the subject of the omission of the House to make the usual provision for the salary of the Inspecting Field Officer: and to that of Mr. Stanley, Sept. 28, 1833. The latter writes thus—"I fully participate in the "regret you have expressed, that the House of Assembly "should have manifested such a disinclination to adopt the "measures which are necessary to secure the efficiency of the "Militia of this Province.—I am unwilling to imagine that "the House of Assembly are indifferent upon a subject of "such vital importance to the Province, or that they will "refuse to forward the views of His Majesty's Government, "by withdrawing the assistance which is required to render "your exertions successful. I am, therefore, desirous that "you should bring the subject again before the Legislature, "at their next meeting, pointing out the obvious inexpedi-"ency of limiting the number of training days, as they were "desirous of doing, and calling upon them to continue a "certain amount of pay to an Inspecting Field Officer."

It is impossible for any one to deny that the Militia system is considered by His Majesty's Government as of the highest importance. Whether it is so in reality is a question which I need not discuss. But this fact should have great weight in the dispassionate consideration of the subject: that every military man, who comes to the Province, attaches just as much importance to it, as His Majesty's Government always has done. I ask then, is it decent and becoming in the House of Assembly to take that course, with respect to the

Militia, which for two or three Sessions past they have taken? It is not long since the Service was quite popular within the walls of that House; and it is not unworthy of remark, that many of the names, which are recorded as voting for the dangerous and unconstitutional resolution of refusing pay to certain officers, to whom, by the Law of the Province, a specific sum is allotted, appear attached to documents of not many years old, of quite an opposite tendency. It is invidious to mention names; but let any one who doubts the fact, refer to the Journals of 1825, and see who was Chairman of the Committee for preparing the Address, to the first speech of Sir Howard Douglas, and look to the terms in which the Militia is spoken of in that address. But, tempora mutantur!

Surely to the repeated recommendations of Government, so pointedly expressed, great attention should have been paid by the House. But instead of paying the least attention to the King's wishes, a Bill is passed by the House, not to render the Militia more efficient, but to render it quite useless. In this Bill the Council refused to concur. Could the House, or can the Country, imagine that the Council is to be a mere nose of wax, to be warped and twisted to suit any face which the House may choose to assume: that when it suits the particular views of the leading faction in the House to comply with the recommendation of the King's Ministers and the Governor, that the Council shall be ready to carry those views into effect: and when it suits the views of the same parties, (no change having taken place in the state of things to warrant a change of system to undo all that they had previously done, and contradict their own deliberate repeated and recorded declarations—that the Council should be ready to concur with them in such flagrant inconsistency, and (degrading themselves into the pliant tools of political faction) to set at nought those recommendations of the King's Ministers and the Governor, which they have again and again

voted to be worthy of adoption and actually adopted. Certainly, what was necessary in 1825, when the Militia was in fashion, is equally necessary now. True—but the country is tired of it! That cannot be helped; if no taxes or impositions were to be laid upon the people, but such as are palatable, I know not where a revenue would come from. Be that as it may, the burden is not very oppressive, nor the commutation for personal appearance very heavy; but if they were more oppressive and heavy than they are, they would be borne with willingness, if, instead of being incited to murmuring and discontent, the people were persuaded to yield a cheerful acquiescence in the wishes of the King and his Government.

Did the House rest quiet after having failed to get a Bill passed to accomplish the object they had in view? If they had, no harm would have been done: but no such thing! They went to work in the good old approved Long Parliament fashion, and passed a Resolution, which I have already recited, that although the Law, which they failed of getting repealed, assigns the Militia Adjutants Fifteen pounds a piece, they would in future make no provision for the service. Yes! His Majesty's faithful Commons deputed by the people to make laws, pass a formal resolution, that they will set his Majesty's loyal subjects in this province, the notable and praise-worthy example of disobeying a Law of their own making! If this instance stood alone, it might be set down for folly, for ignorance, for madness, for any thing: but unhappily within the period I have named, this admirable compendious method of proceeding by Resolution, against Law, has been of such frequent recurrence, that it is impossible to repel the conviction, that there is a settled design in a faction of the House, to set up the House of Assembly, as paramount to the Law of the Land.

I am going now to enter upon a subject, if possible, of greater importance, than any of those which have yet occupied my attention. It was forced upon me, by a remarkable passage, in the pamphlet under consideration which I have already quoted. "The constituency of this Province will never consent to any appropriation for *Legislative Council as at present constituted.*" When we connect the words in this declaration *as at present constituted*, with other expressions dispersed through different parts of the work: when we bear in mind that the Newspaper which since the late Session, has been the avowed acknowledged organ of the majority of the House, has been expressing some strong opinions on the subject of the constitution of the Council; nay more, that a succession of articles from another newspaper has been deliberately copied in it, with every mark of cordial approbation, in which specific changes in the constitution of the Council are mentioned as a measure which is necessary to satisfy the country, and that these projects are so far approved by the parties whose organ that Newspaper is acknowledged to be, that the latter paper is hailed as an invaluable coadjutor in the objects they have in view: it is time for reflecting men to pause, and narrowly to investigate the nature and tendency of these projected changes, and the principles of the parties from whom they proceed.

Let us look back a few years, and call to mind the clamour that was raised at the Puisne Judges having seats in Council: and why was all this clamour raised. Certainly not because the Gentlemen then on the Bench were not men of talents and integrity; men who had neither talents to know what was right, nor firmness of principle to do it, and who were willing to permit the dignity of the House of which they were Members, to be compromised, nor it to be made subservient to purposes of faction. However they were unhappily removed, and other persons appointed to their seats,

to the regret, as I firmly believe, whether avowed or not, of every man in the Country not confederated with that party in the Legislature, whose views the removal certainly promoted for a time, and whose conduct and speeches had caused it to be made. Not satisfied with their triumph, by which it was soon found that no lasting advantage could be made, "the creature is at its dirty work again."

Now a proposition has been launched for the public consideration, whether in consequence of that failure, or not, I know not, and as I said before with every mark of approbation on the part of that Newspaper which since the Session has been the organ of the minority in Council and the majority of the House, to which was sent the protest of the minority in the division in Council on the rejection of the Appropriation Bill and in which it first appeared, duly ushered in by a recital of various private facts connected with it: in which intimation was given that a pamphlet was in preparation by a gentleman described, in a way which could not be misunderstood, as a Member of the Legislature, which has since been printed at the office of the paper, a proposition has been launched for a thorough change in the constitution of the Council by MAKING THE MEMBERS ELECTIVE. Reflecting men have naturally been somewhat astonished at this proposition. They have asked with no small degree of solicitude, if the country is to understand that the minority in one House, and the majority in the other, avow those sentiments so boldly, and so broadly put forth by their, if not acknowledged at least, ci-disant organ? The impression on the mind of many persons, is, that they have adopted such views, and that they have authorised the public declaration that has been made, were it not so, it is said, and with much apparent justice, that in some shape or other they would have disclaimed them. Even admitting, that though they might consider a Newspaper, a proper vehicle for giving publicity

to a parliamentary protest, they should deem it not a proper channel, for disavowing sentiments which, without gross injustice, might be imputed to them, yet the publication of the pamphlet, into the secret of which they had been admitted, would have afforded them an opportunity of which the most fastidious might have availed themselves. That the notion of an Elective Council is entertained with great favor by the author of the Pamphlet, and the party whose organ he is, cannot be denied; almost every page of his book shows it. But is the country ripe for such a revolution? That is a question of great importance. I think that the country is *not* ripe for such a revolution. I think that the country is decidedly conservative, determined to maintain the constitution as it exists: that the mass of the country without perhaps being, competent to hold an argument on the subject, without having it in their power to point out why, and in what respects the existing constitution is best suited to the wants and feelings of the country, are satisfied with it; and as loyal British subjects ought to be, are averse to any speculative changes in it. I am confident that the project of an Elective Council would be rejected with the scorn and ignomy which it deserves. If this is to be the beginning of a discussion, on the constitution of the Council: If the same course is to be pursued which was adopted rather more than two years, ago, with so much disgraceful success, and this mooting of the question, is to be followed by another John Gape Drama, by means of which, an attempt is to be made to drive the people first into madness, and revolution, it is high time some preparation were made for the conflict. I shall therefore lay before the public, and I entreat them for the sake of their own peace of mind, for the public peace, and for their children's peace—and such an appeal never can be made in vain when addressed to the loyal sons of suffering Loyalists, to give them the attention their paramount importance so justly demands.—The sentiments of Mr. Justice Story, one of the

most eminent of the Judges in the United States on the constitution of the Legislature for a free Country, and a British possession must and ever will be a free country.

He says, chap. VIII., that all Legislative powers are vested in a Congress of the United States, consisting of a Senate, and House of Representatives. It may not be uninstructive to review some of the principal arguments by which this division of legislative power is vindicated. The first and most important ground is, that it forms a great check upon undue, hasty, and oppressive legislation. Public bodies, like private persons, are occasionally under the dominion of strong passions and excitements, and are impatient, irritable, and impetuous. The habit of acting together produces a strong tendency to what is called l'esprit du corps. Certain popular leaders often acquire an extraordinary ascendency over the body by their talents, their eloquence, their intrigues, or their cunning. Measures are often introduced in a hurry, and debated with little care, and examined with less caution. The very restlessness of many minds produces an utter impossibility of debating with much deliberation, when a measure has a plausible aspect, and enjoys a momentary favor. Nor is it unfrequent, especially in cases of this sort to overlook well founded objections to a measure, not only because the advocates of it have little desire to bring them in review, but because the opponents are often seduced into a credulous silence. A legislative body is not ordinarily apt to mistrust its own powers, and far less the temperate exercise of these powers. As it prescribes its own rules for its own deliberation, it easily releases them, whenever any pressure is made for an immediate decision. If it feels no check but its own will, it rarely has the firmness to insist upon holding a question long enough under its view to see and mark it in all its bearings, and relations in society. But it is not merely inconsiderate and rash legislation which is to be guarded

against, in the ordinary course of things. There is a strong propensity in public bodies to accumulate power in their own hands, to widen the extent of their own influence, and to absorb within their own circle, the means, and the motives of patronage. If the whole legislative power is vested in a single body, there can be, practically, no restraint upon the fullest exercise of that power: and of any usurpation which it may seek to excuse or justify, either from necessity, or a superior regard to the public good. With a view, therefore, to preserve the rights and liberties of the people against unjust encroachment, and to secure the equal benefits of a free constitution, it is of vital importance to interpose some check against the undue exercise of the legislative power, which in every government is the predominating, and almost irresistible power. The value then of a distribution of the legislative power between two branches, each possessing a negative upon the other, is, 1st. It operates directly as a security against hasty, rash, and dangerous Legislation, and allows errors and mistakes to be corrected, before they have produced any public mischief. It interposes delay, and thus furnishes time for reflection, and for the successive deliberation of different bodies, actuated by different motives, and organized upon different principles. 2d. It operates directly as a preventive to attempt to carry private, personal, and party objects not counted with the common good, for it is far less easy to deceive, or corrupt, or persuade two bodies, than it is one, especially if the elements of which they are composed are essentially different.

A Senate as a second branch of Legislature, distinct from and dividing the power with a first, must be in all cases a salutary check upon the government. The genius of the two bodies must however be dissimilar, and it must be politic to distinguish them from each other, by every circumstance, which would consist with a due harmony in all proper mea-

sures, and with the genuine principles of republican government. "(It is interesting to observe with what facility this object is secured in the British Provinces, simply by reserving to the Crown, the power of appointing the Councillors, instead of leaving them to be elected by the people according to the proposed new constitution; were that done we should be compelled to have recourse to the various artifices, and adjustments to which they have been driven in the United States.") "It is a propensity of all single and numerous assemblies to yield to the impulses of sudden and violent passions, and to be seduced by factious leaders into intemperate, and pernicious resolutions. A body which is to correct this infirmity, ought to be free from it, and consequently ought to be less numerous, and to possess a due degree of firmness, and a proper tenure of office."

"The rapid succession of new Members will occasion too great a mutibility in the public councils; from a change of men there must proceed a change of opinions, and from thence a change of measures. Such instability in legislation has a tendency to diminish respect and confidence abroad, as well as safety, and prosperity at home, and to impair the reverence and attachment, which are indispensable to the permanence of every political institution."

It is difficult to impress upon any single body, which is numerous and changeable, a deep sense of the value of national character. Holding their situation but a short time, little responsibility is felt, and little pride indulged, as to the course of government. A Senate would keep alive a due sense of national character.

The frequency of change in the representatives would in many instances, impair their responsibility, for if there was but one Assembly, and that chosen only for a short period, it would be difficult to keep up the train of proper mea-

sures, or to preserve the proper connection between the past and the future, and the more numerous the body, and the more chargeable its component parts, the more difficult will it be to preserve the personal responsibility, as well as the uniform action of the successive Members to the great objects of the public welfare."

" Not only would a Senate operate as a salutary check upon the Representatives, but it would act occasionally upon the people themselves, against their own temporary delusions and errors. There are moments in public affairs, when the the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures, which they themselves will afterwards be most ready to lament and condemn. In these critical moments, how salutary will be the interference of a body of respectable citizens chosen without reference to the exciting cause, to check the misguided career of public opinion, and to suspend the blow, until reason, justice, and truth, can gain the authority over the public mind :"

Deeply do I regret, that to keep within proper limits, I should have been compelled to omit, as I have done, any part of this masterly statement. No one can form an idea how much it has suffered by being abridged, unless he examine for himself the splendid passage in the original. People who make up their minds without reflection, might perhaps be induced to think, that it would be a very nice pleasant thing, to have the election of the councillors. But what would be the use of having a second branch in the Legislature, were both of them, according to the vulgar adage to be " tarr'd with one stick." To guard against this, in the United States, in the Representatives, there is a Representative of the people according to the relative population of each State, upon a given basis ; but in the Senate, it is not so,

for each State, be it large, or small, there are *two* Senators. The representatives are chosen by the people at large; not so the Senators—they are chosen by the Legislature of each State, the representatives are chosen every *second* year, the Senators are chosen for *six* years, one third going out, by rotation every second year. Now mark the contrivances to which these sagacious people have been compelled to have recourse, to accomplish an object, which in the Province, is achieved with a simplicity, and success, which leave nothing to be desired: the Councillors are appointed by the King!! and yet it is now sought to disturb this arrangement: and for what! because the Councillors will not consent to do, what they are specially appointed to prevent others from doing.

ERRATA.

The Author having been unable to revise the proof sheets, some errors have unavoidably been committed. The Reader is requested to correct the following.

P.	LINE.	FOR	READ	P.	LINE.	FOR	READ
8	21	therefore	before	33	22	Before	But before
11	32	part	fact	36	26	it: let	it! Neither let
12	22	this	. This	52	28	ivi-disant	soi-disant
18	16	after	often	53	28	first into	into
19	19	collision	collusion	"		demands,—The	demands—the
31	22	possession	the possession	54	29	releases	relokes.